App F IX 4

Previous References 1946-47 (MC)

File No 138-46
Serial Nos 374

Later References
Ml 110/44, (188, 189)
Ml 41-47 (57, 58)

GENERAL AND REVENUE SECRETARIAT

Ml 50-50-8
~~Ml 60-50-8~~
Ml 59-52 27, 28

Serial Nos
Reo

Part B for

SUBJECT

Appointment of Mr P. D'Souza, as a Nominated Municipal Councillor Chengalpattu Ml &l

K 11002 — & 7 — W

Re D - C Radio

States that there is no-objection for Mr D'Souza a Town Councillor to be a member of the said Ml — &l

Serial No

From the D c Kadur Dst

No A3 c 673/46 & 11/9/46

Requests to be informed of Mr A D'Souza — a nominated member of the Chikmagalur Taluk Board — who has been appointed as public Prosecutor for the Kadur Dst is a full time servant of govt and whether he is disabled to continue as such

1) According to section 12 (2) (c) of the T B Act, 1933, if any member, by becoming a salaried servant of the govt causes the number of nominated councillors who are salaried servants of govt to exceed the proportion fixed as prescribed under section (2) of section 9, he is disabled from continuing to be a councillor

2) In this case, the point for consideration is whether Mr D'Souza who has accepted the post of public prosecutor is a full time employee of govt public prosecutors cannot perhaps be considered as 'salaried servants" and the full time

NOTF—Contn Sheet

employees of govt and as such, this case does not come under the purview of Section 12(2)(c) of the Act referred to at para 1 supra

3) In the above circumstances, Mr D'Souza may perhaps continue as a member of the Chakmaghat Town bd el bodies and while he is engaged on behalf of or against the bd el in any proceedings as a public prosecutor.

4) Law section may also be consulted in the matter subject

ma 14/9 [illegible] 16/9/46

5) [illegible] 17/9

6) For favour of opinion in the matter

[illegible] 17/9/46 17/9

subst.

A salaried servant of Govt does not include a person in receipt of a salary from Govt who is not a full time servant of Govt (vide s 3 (17) of Town Municipalities Act) A public prosecutor is not a full time servant of Govt as he is at liberty to appear in cases

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civil and criminal, in which Govt is not a party but the circumstances he does not come within the purview of S 122(1) of the T P Act

NAM 19 M

b) What are the rules in regard to the R A & R C Pull up a latest copy of the manual

for 20/9

a copy of the RA Manual - Manual not found

subd. 9)

Third of the matters in Rules 20 of the Govt of Nyasa Act 1936 (page 12 of the RA Manual). A person shall not be disqualified for being chosen as or for being a member of the Assembly if he holds any office in the civil or military service of H M the Protectorate other than an office declared by rules made under the Act not to disqualify its holder If any question arises as to whether any office is or is not in the whole-time service of H M the Protectorate, the decision of the Governor shall be final (vide rule 14(3) page 39)

NAM 4 10 46

1.) There is a distinction between the disqualification imposed in [redacted]

* See 20(1)(a) of the Govt of Nyasa Rules & See 12(2)(c) of the Town Municipalities Act under the former any person holds

NOTE—Contn Sheet

holds any office, in the civil or military service of the Colony is disqualified under the title a "salaried servant of the Govt is disqualified "salaried servant of the Govt" is defined in Sec 3 (14) of the P.M Act. as 'A person in receipt of a salary from the Govt who is not a full-time servant of the Govt is not a salaried servant' ~~Dr~~ The P P is in receipt of salary from the Govt. The question is whether he is a full-time servant of the Govt. He is paid a monthly salary & his pay ~~should~~ was made liable to pay cut and he is now given the cleaners allowance. He is no doubt allowed to ~~have private~~ appear in other courts but that is not the sole criterion as medical practitioners in Govt service are allowed to have private practice. The P P appears to be a full-time servant as his services are at the disposal of the Govt at all times ~~Govt~~ The Private fees may perhaps be considered as to how the appointments are treated ~~and~~ If the P P is a full-time servant, he cannot be a member of any municipal council.

11/17

(Rawlings)

6/10 '46

Pwrpn wrpnn TMMC

8/10/46

SECT. OF STATE 1414 7 OCT 1946 GOVT OF GUYANA

WD 03814—GPB—15 000—20-7-46

General and Revenue Secretariat | File No 1235 Law of 194

Serial No

12) For former of opinion vide A

For Secy
W C

SLL
8/10
for

NSB

When young dearness allee per was beaten 2576 - 9/10 as servant

Boo up

Flag H' 10/10

13)

The Public Prosecutors have been considered as Government Officers for purposes of grant of War Allowance (High price allowance) and this allowance is given only to whole-time officers - vide G.O. No. Fl. 2556-2615/S&A. 16-43-7 dated the 20th December 1943. Public Prosecutors are therefore to be deemed whole full-time officers.

B
17/10

SLL
18/10

for 18/10

14) add

The Secy - to Govt Financial Secretary - for kind favour whether Act not to be applicable

12 copies
NSB 18 10
CWW 18/10

15) The P P is a whole time or full time servant of the Govt under sec 12 (2) (c) if the number of salaried servants of the Govt exceeds the proportion prescribed in sub-section (2) of section 9, the Govt cannot appoint a salaried member of the municipal council among a nominated members.

22 1575 316

NOTE—Contn Sheet

Lawless)

for 22/10

Serial No

16) The point referred for opinion depends on whether a Public Prosecutor has to be considered to be a salaried servant of the Government and as such to be disqualified from continuing as a nominated member of a Town Municipal Council -- in this case Chikmagalur Town Municipal Council where Mr B D'Souza who has been appointed recently as Public Prosecutor for Kadur District is a nominated member of the Municipal Council. According to the Town Municipalities Act of 1933, a municipal councillor may be disabled from continuing as such by becoming a salaried servant of the Government only if thereby he causes the number of nominated councillors who are salaried servants of the Government to exceed the proportion prescribed in Section 9(2) of the Town Municipalities Act It is therefore clear that a person by becoming a salaried servant of the Government does not incur any disqualification Disqualification arises only if by becoming so the fixed proportionate number of nominated councillors who are salaried servants of Government is upset It is therefore necessary for the Deputy Commissioner of Kadur to see whether the fixed proportion of nominated councillors is affected by Mr B D'Souza accepting the office of a Public Prosecutor for the Kadur District

17) On the general question as to whether a Public Prosecutor is disqualified from continuing as a Municipal Councillor, opinion has to be expressed that it depends entirely on whether he has to be

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be regarded as a salaried servant of the Government According to the note at para 13 above it is said that because public prosecutors are allowed to draw War Allowances they must be regarded as whole-time officers of Government At para 10 above it is expressed that a public prosecutor is allowed to appear in other than Government cases and hence must be construed to be a legal practitioner with private practice of his own In such circumstances, the moot point for consideration would be whether he can be considered to be a whole-time Government servant Merely because War Allowances are granted to Public Prosecutors it is difficult to consider that they are whole-time salaried servants They are engaged for only a period of three years or more and their service is not subject to pension rules So also, the other circumstances under which a regular Government servant works would not be applicable The analogy of a medical officer would not in my opinion be applicable A Medical Officer is allowed to have private practice but he is otherwise a whole-time Government servant ~~and~~ to whom all the rules under the Mysore Service Regulations are fully applicable In the case of Public Prosecutors, if they are already elected or nominated Municipal Councillors there have been instances where the acceptance of Public Prosecutor ship has not been considered to debar them from -- continuing as Municipal Councillors or members of any other local or representative institution It has been within my knowledge that the Public Prosecutor of Civil and Military Station Bangalore ~~also~~ continued to be not merely a

NOTE—Contn Sheet

Serial No

a Municipal Councillor but was given the Vice-Presidentship of the Municipal Commission Similar instances may also be gathered from the practice prevailing in, for instance, Madras Presidency or even other Provinces in India If what is contained in Government of Mysore Act may be taken into consideration it will be found in Rule 14 that a person who is a holder of any office which does not involve whole-time service and remuneration by salary, wages or fees, is qualified for being a member of the Assembly or Legislative Council and the decision of the Government is final so far as the question as to whether any officer is or is not a whole-time Government servant is concerned (Vide Rule 14 read with Section 20 of the Government of Mysore Act) According to Rule 14 clause (1)(b) the holder of any office would suffer disqualification if it involves - (1) whole-time service and (2) remuneration by salary. Both these conditions must be fulfilled before the disqualification can set in In my opinion, if for instance, the office involves whole-time service without remuneration by salary the holder of the office will not be disqualified Vice versa although a holder of an office may be remunerated by salary if it does not involve whole-time service he will not be disqualified In the present instance, a Public Prosecutor does not render whole-time service on behalf of Government It is an accepted factor that he can accept briefs on his own account wherever he is not required to conduct any litigation on behalf

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Serial No

behalf of Government Such being the case, even though he may be remunerated by salary, taking all the circumstances of the office into account viz , the office being only conferred on a person for a limited period and the holder thereof being allowed to practise as a Lawyer on his own account otherwise than when his services are required for Government, it is difficult to look upon him as a salaried servant of the Government In my opinion, therefore, there seems to be no legal impediment for his continuance as a member of the Municipal Council at Kadur

A/

Rw 5 my wc

8x 30/10 30/x 31 x 11

(8) On receipt of the opinion furnished by the Secretary, Law, as above 'A' for reasons stated a draft ~~letter~~ reply is put up for consideration to the effect that, though the appointment of Mr D Souza as a public prosecutor does not debar him from continuing as a member of the Chikmagalur Municipal Council and that he may, therefore, continue

NOTI —Contn Sheet

Continuance of Mr D Souza - public

2071/1/Prose File No — as a member of the Municipal Council

General and Revenue Secretariat

Serial No

as such submitted with reference to para 5 supra

Mr 31/10 (i) It is for orders if the above Law opinion may be accepted and the same communicated to the Kandy District.

It is respectfully submitted that, apart from the Law opinion, it would be expedient to continue Mr D'Souza as a member of the Municipal Council, as he is in receipt of some remuneration even as a part time servant of Govt formerly public revenue. The general public who do not know the niceties of the distinction between a whole time servant & a part-time servant of Govt would consider him to be a Salaried Servant of Govt

Vide if they consider in public interest to be whether in view of Govt / vide para 13 supra for

vide para 5 supra

Mr 31/10

21) On grounds of Policy, it is inexpedient that he should continue to serve as a Member of the Board in his non official capacity. Like the SDO's D.R.O & the Ex Engr, he is such an Ex officio Member. Perhaps the DC may be asked to suggest but D'Souza that he

2071
L

May tender his resignation
that would be a satisfactory
solution of this trouble

Minister for Rev
& Customs

Dow
1/11/46

OFFICE OF THE MINISTER
FOR REVENUE
No 3341 3942
Date 1.11.46 30.11.46

2

The opinion of the Gen Advocate
may also be obtained the views expressed by the
Law Dy have considerable weight As the issue
raised is important & similar instances may crop
up in the future also, it is desirable to take a decision
after careful consideration

Dow
2/11/42

4/11/46

Dow
2/11/46

Genl. 231
1.11.46
Dy 2.11.46

GO MO 72/46
2.11.46

Forwarded with Compliments to
the Advocate-General in regard to
favour of opinion in the matter

B.O
for Secretary

In reply to your

2/11/46

MO MO 38/46-47
Dy 4.11.46

I concur with the Secretary, Law Dept in the opinion
that the Public Prosecutor is not a "salaried Servant of the
Government" for the purposes of the Town Municipalities Act

Attorney-General
Ag 18/11/46

SECT. - MINISTER
20
19 NOV 1946
GOVT. OF INDIA

Kind reference is
invited to the
Public Service Conduct
rules (Rule 49)

Minister for Rev
& Customs

MW Secy
MC

A public
prosecutor
can neither be
Nominated Nor Elected
to the Municipality

Dow
19/11/46

Dow
20/11/46

Please ask the with reference to Rule 49
Secy to note
the Public Prosecutor
Dow 20/11

2071
L 1235 /Law

97) In favour of opinion
(vide minutes under matter
previous page)

Advocate
Law Secy (WRC) for
2/10/46

f 21/11

98) Rule 48 states that no full
time servant of Govt shall stand
for election as a President, Vice
President or a member of a
municipal council or of a
District Board

99) The provisions of the
rules (along with Rules 41 & 49
& 49) have been made applicable
to the Advocate General, Public
Prosecutor & Govt Pleaders

100) The original reference
for opinion was received in
D'Langa and entire
file a member of the council
is seeing Section 12 (2) (c) of the
Town Municipalities Act.

Laws Sec)

for
25/11

SEC. 1313
25 NOV 1946

Serial No

31) With reference to the view expressed at paras 16 and 17 it must be said that it is based exclusively on the legal aspects of the point arising for orders. If, apart from the legal aspects, the provisions of Rule 49 of the Rules for the Conduct of Government Servants have to be taken up, I find that Rules 41 to 49 referred to in the second part of Rule 49 relate to a full-time servant of Government standing for election. In the present case the question does not arise as Mr B D'Souza is not standing for election as a Municipal Councillor. He is a nominated member of the Kadur Municipal Council and his nomination has taken place long before his appointment as Public Prosecutor. In the circumstances, therefore, it has to be considered whether he can continue as Municipal Councillor under the nomination made long prior to his appointment as a Public Prosecutor. Since Rule 49 as also Rule 48 refer only to a full-time servant of Government standing for election, I consider that there is nothing prohibiting the officers mentioned in the second part of Rule 49 from being nominated as Municipal Councillors or District Board Members, or to their continuing as such if they have been so nominated or even elected prior to their appointment. In this view I may state that even under Rule 49 there is no objection to Mr B D'Souza continuing as a Municipal Councillor of the Kadur Town Municipality. What is -- prohibited appears to me, according to the language of Rules 41 to 49 of the Rules for the Conduct of Government Servants, only that after a person has been appointed Advocate General, Public Prosecutor or

NOTE—Contn Sheet

File No 1235 of 194

General and Revenue Secretariat

Serial No

or Government Pleader he should not stand for election as a member of any of the local bodies mentioned therein

New Secy MC)

26/11

26/XI/46

26/11/46

1) Submit for personal orders with reference to para 2 above

Secy 28/11/46

2) May the Advocate General be consulted?

28/XI/46

Minister for Revt Comns)

28/11/46

OFFICE OF THE MINISTER FOR REVENUE
No 4226
Date 29.11.46

3) Decision may be informed that there is no disability for Mr D'Souza continuing to be a member of the Municipal Council

31/1/47 1/2/47

Dft letter A 1/2/47

Submitted with a draft for approval

3/2 To the D C Kadur

No. L 11002/138/46-C 3/2/47

~~Intd Statt~~ directing that there is no disability for Mr D'Souza continuing to be a member of Chickmagalur Municipal Council

TYPED 10-7

B 20/2

WD 03814—GPB—15 000—29 7 46

OFFICE OF THE DEPUTY COMMISSIONER,
KADUR DISTRICT

one. Dated Chikmagalur, 11th Septr, 194 46

WL 138-46-3

GEN & REV SECRETARIAT 2071 13 SEP 1946 L S G BRANCH

FROM

G. N Nagaraja Rao, Esq, M sc,
Deputy Commissioner,
Kadur District

To

J B Mallaradhya, Esquire, M A,
Secretary to Government,
Revenue Department,
Bangalore

Sir,

I have the honour to state that Mr B D'Souza, M A, LL B, a nominated Councillor of the Chickmagalur Town - Municipality has since been appointed as Public - Prosecutor for the Kadur District A doubt having been felt that he is disabled to continue as a Member being a salaried servant of Government as he was addressed in the matter by the Municipal President In reply he has stated that his appointment as Public Prosecutor does not disqualify him from being a Member of the Municipal Council, since he is not a salaried

salaried servant of the Government as defined in the Mysore Town Municipalities Act. A copy of his letter addressed to the President is enclosed for reference

2 According to the definition of the term "Salaried servant of the Government" as given in the Town = Municipalities Act, it shall not include a person in receipt of a salary from Government who is not a full time servant of Government I therefore request that I may be kindly informed whether the Public Prosecutor is a full-time servant of Government and whether the Member in this case is disabled to continue as such.

I have the honour to be
Sir,
Your most obedient servant,

Deputy Commissioner,
Kadur District.

HPR

3/2 To the D C Kadur
No. L 11002 138-46-C 3/2/47
~~Instate~~ direct that there is no disability for
Mr. D'Souza continuing to be a member of Chickmagalur mc cor
20/2

WD 03814—GPR—15,000—29-7-46

Copy of letter dated 22 8-46 from ~~kkm~~ B.D'Souza,Esq ,M A ,LL B Public Prosecutor, Chickmagalur to the President, Town Municipal Council Chickmagalur

---

Reference - O C 34/46-47 dated 19-8-46

My appointment as Public Prosecutor does not disqualify me being a Member of the Municipal Council, as I am not a Salaried servant of the Government" as defined in the Town Municipal Act of 1933, and there is no other reason why, I should resign my membership If the Government thinks that it is a disability, I have no objection to resign my membership of the Council

---

"" Copy ""

for Deputy Commissioner,
Kadur District

HPR

Six F G —1]

EC

ry No of letter replied to

General and Revenue Secretariat

( )

the 194

Date of issue 7/2/47

Signed by Mr JRRao

List of enclosures

Copied by

Examined by

Section M

File No 138-46

Serial No 4

No L.11002

To

The D C Kadur District

Sir,

In reply to your letter no A3-C 673/46-47 dated 11-9-1946 requesting instructions as to whether Mr B D'Souza, M A, LL B, — a nominated member of the Chickmagalur Town Municipal Council — who has been appointed as a public prosecutor, may continue as a member of the Municipal Council I am directed to state that ~~public prosecutors cannot be considered to be the whole time employees of Govt and that therefore~~ the Govt consider that there is no disability for Mr D'Souza

Appendix F G —1]

SUBJEC

Section M

File No 138 – 46

Serial No 4

Diary No of letter replied to

No L.11002

General and Revenue Secretariat

( )

the 194

To

The D C Kadur District

Sir,

Date of issue 7/2/47

Signed by Mr JKRao

In reply to your letter no A3-C 673/46-47 dated 11-9-1946 requesting instructions as to whether Mr B. D'Souza, M A, LL B, — a nominated member of the chickmagalur Town Municipal Council — who has been appointed as a public prosecutor, may continue as a member of the municipal council, I am directed to state that ~~public prosecutors cannot be considered to be the whole time employees of Govt and that therefore~~ the Govt consider that there is no disability for Mr D'Souza

List of enclosures

Copied by

Examined by

WD 02 45—GPB—2 000—24 6 46

I continuing to be a member of the said municipal
council of Ichnemagatan

I have etc,

Jay Dee Seey